JAG SINGH v. TOONG FONG OMNIBUS CO. LTD. (No. 2)

[O.C.J. (Suffian J.) December 22, 1961]

[Kuala Lumpur — Suit No. 66 of 1961]

Practice and Procedure — Judgment read by Registrar owing to illness of Judge — No opportunity to argue regarding costs — Reopening of matter.

Costs — Contributory negligence — Discretion.

An order pronounced by a Judge whether in open Court or in Chambers can always be withdrawn, altered or modified by him, either on his own initiative or on the application of a party, until such time as the order has been drawn up, passed and entered.

In this case the learned Judge ordered that the plaintiff should get only half his taxed costs. * Owing to his sudden illness the judgment had to be read by the Senior Assistant Registrar and in the absence of the learned Judge the plaintiff was denied an opportunity to present arguments regarding costs. At the request of the plaintiff the matter was reopened, and *MacCarthy* v. *Raylton Productions* (2) was cited for the proposition that, unlike in admiralty cases, the practice in the Queen's Bench Division is that where the defendant has been held to be partly to blame, the plaintiff is entitled to the whole of his costs.

Held: the practice is not of general application. Costs are awarded at the discretion of the Court and each case should be considered on its own merits. In the circumstances of the case the plaintiff should get only half his taxed costs.

Cases referred to:—

(1) *In re Harrison's Share Under A Settlement, Harrison* v. *Harrison*, [1955] 1 Ch. 260.

(2) *MacCarthy* v. *Raylton Productions*, [1951] W.N. 376.

CIVIL SUIT.

Denis Murphy (*G. Tara Singh* with him) for the plaintiff.

M. Edgar for the defendants.

Suffian J.: In this case I found that both the plaintiff and the driver of the defendant company were equally to blame for the accident in which the plaintiff lost his right leg and accordingly I ordered that the plaintiff should get only half his taxed costs. Owing to my sudden illness the judgment had to be read by the Senior Assistant Registrar and in my absence the plaintiff was denied an opportunity to present arguments regarding costs. On 20th December, 1961 at his request I agreed to hear him on this point.

Mr. Edgar for the defendant company, argues that I have no power to reopen this matter. On the authority of the English Court of Appeal decision *In re Harrison's Share Under A Settlement, Harrison* v. *Harrison* (1), brought to my notice by Mr. Murphy for the plaintiff, I hold that an order pronounced by a Judge whether in open Court or in Chambers can always be withdrawn, altered or modified by him, either on his own initiative or on the application of a party, until such time as the order has been drawn up, passed and entered. In this case my judgment has not been perfected.

* Reported at p. 78, *supra*.

The next question which arises is whether I should vary the order regarding costs. Mr. Murphy cited *MacCarthy* v. *Raylton Productions* (2) for the proposition that, unlike in Admiralty cases, the practice in the Queen's Bench Division is that where the defendant has been held to be partly to blame, the plaintiff is entitled to the whole of his costs. I have considered the cases at pages 39-40 of *Bingham's* Motor Claims Cases, 4th Edition, which cases were also brought to my notice by Mr. Murphy, and I find that the practice is not of general application. Costs are awarded at the discretion of the Court and each case should be considered on its own merits.

I have carefully re-considered this matter and I regret that I am unable to alter my original decision that in the circumstances of this particular case it is fair that the plaintiff should get only half his taxed costs.

Order accordingly.

Solicitors: *Murphy & Dunbar; Bannon & Bailey.*

SUBA SINGH v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Rigby and Neal JJ.) September 12, 1960]

[Ipoh — F.M. Criminal Appeal No. 13 of 1960]

Criminal Law and Procedure — Murder trial — Drunkenness — Charge to the jury — Penal Code, ss.86(ii) and 302.

Where the prosecution relies on the presumption that a man intends the natural and probable consequences of his act to make out the intention which is a necessary ingredient of murder, the jury should be invited to consider the evidence of drunkenness as something which might have the effect of rebutting that presumption.

Cases referred to:—

(1) *Director of Public Prosecutions* v. *Beard*, [1920] A.C. 479.

(2) *R.* v. *Meade*, [1909] 1 K.B. 895.

COURT OF APPEAL (CRIMINAL).

R. Ramani for the appellant.

Abdul Hamid bin Omar (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted at the Muar Assizes for the murder of one Chand Singh in contravention of section 302 of the Penal Code. The verdict of the jury was a majority one.

At this stage I do not think it is necessary to say anything about the facts of the case beyond observing that there was abundant evidence to show that the appellant and the deceased came together in a street in Batu Pahat on 22nd April this year and the appellant inflicted on the deceased a stab wound as a result of which he died. I do not think that that stabbing has ever at any time been in any real controversy.

But it is also clear on the evidence that at the time of the stabbing the appellant had taken drink and may or may not have been under the influence of the drink which he had taken.

The trial Judge in his charge to the jury dealt with the matter in this way. He described the injury which it was said the appellant had inflicted on the deceased and he pointed out (as is frequently pointed out in such circumstances, and I hasten to add frequently and quite properly) that they were entitled to rely on the presumption that a man intends the natural and probable consequences of his acts and that in the circumstances of the present case that presumption, unless it was rebutted, would make out the intention to kill, which is a necessary ingredient in the crime of murder.

So far we are not prepared to quarrel with what his Lordship said.

He went on, however, to deal with the question of the drink which the appellant had taken and here unfortunately we find ourselves unable to agree with what he said.

There are two passages in the summing-up in which he dealt with the point. They are as follows:—

"It is no defence for the accused to say that he has no recollection of what happened because he was drunk. Where an accused person gets into a state of drunkenness of his own free will, the Court will not attach any importance to the fact that he was drunk and will draw the natural inferences from his acts. So if you are satisfied and sure in your minds that the accused did in fact stab the deceased, the fact that he was drunk is no defence."

and again at a later stage:

"You must put the question of drunkenness out of your minds when you come to consider your verdict, for, as I have already told you, voluntary drunkenness is no defence."

Now, no doubt these passages correctly state the effect of the Penal Code as it was before it was amended in 1936 and no doubt they correctly state the relevant provisions to-day of the Indian Penal Code, although I am not sure that they correctly state the law as it is in fact applied in India to-day. That, however, is beside the point, because in 1936 the Penal Code was amended and there is very little doubt that it was so amended in the light of the decision of the House of Lords in the case of *Director of Public Prosecutions* v. *Beard* [1] where the late Lord Birkenhead reviewed very extensively the English law relating to drunkenness which by that time had fallen into a certain amount of confusion.

In particular, the Penal Code was amended by the insertion of the following new sub-section 86(ii):—

"Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence."

That is the same as the English law and an example of how it has been put to a jury is to be found in the words of Lord Coleridge in *Meade's case* [2]. Lord Coleridge's words were:—

"Where it is part of the essence of a crime that a motive, a particular motive, shall exist in the mind of the man who does the act, the law declares this — that if the mind at that time is so obscure by drink, if the reason is dethroned and the man is incapable therefore of forming that intent, it justifies the reduction of the charge from murder to manslaughter."

Had some such words been used to the jury in the present case and had their attention been directed in the light of them to the evidence regarding drunkenness we find it quite impossible to say whether or not they would have brought in a verdict of murder. After all it was a case where the prosecution were relying on a presumption to make out the intention which is a necessary ingredient of murder and the jury should have been invited to consider the evidence, such as it was, of drunkenness as something which might have the effect of rebutting that presumption.

But they were not so directed and in the circumstances we have no option but to quash the conviction for murder. Using our powers under the Courts Ordinance we substitute a conviction for culpable homicide not amounting to murder and impose a sentence of eight years' imprisonment.

I should add that it is not out of any lack of consideration for the other arguments addressed to us by counsel for the appellant that we have not dealt with them specifically. We think, however, that it is desirable we should deal with the one ground and the one ground only in relation to which our views will be of assistance elsewhere.

Conviction for culpable homicide not amounting to murder substituted.

Solicitors: *Braddell & Ramani.*

INDO AUSTRALIAN TRADING CO. LTD. v. MASAHAT & ORS.

[A. C. J. (Chua J.) January 17, 1962]

[Singapore — District Court Appeal No. 5 of 1961]

Landlord and tenant — Death of contractual tenant prior to 8th September, 1947 — Payment of rent by daughter occupier — Acceptance of rent by landlord — Sale of property to new landlord in 1949 — Acceptance of rent by new landlord — Status of occupier — Status of members of occupier's family.

Prior to May 1949, one Gunny Puteh was the registered tenant of property known as 75-D Moonstone Lane and the landlords were the Estate and Trust Agencies (1927) Ltd. In fact, however, Gunny Puteh had died 20 years earlier and his daughter, Puteh binte Ghani, was in occupation and had been paying the rent. The Estate and Trust Agencies, it appeared, were aware of the true position and continued nevertheless to accept rent from her whilst continuing to show her deceased father as tenant of the premises on their records. In May 1949, the plaintiffs bought the property from the Estate and Trust Agencies and in due course were informed of the true position regarding the property occupied by Puteh binte Ghani. However, they continued to accept rent from her up to the end of October 1956.

In July 1957, Puteh binte Ghani having fallen into arrears with the rent, the plaintiffs sent a notice to quit,